

ABERDEEN CITY COUNCIL

COMMITTEE	Audit, Risk & Scrutiny
DATE	12 May 2021
EXEMPT	No
CONFIDENTIAL	No
REPORT TITLE	RIPSA - Quarterly Report – Quarter 1 2021
REPORT NUMBER	COM/21/098
DIRECTOR	Chief Executive
CHIEF OFFICER	Fraser Bell – Chief Officer Governance
REPORT AUTHOR	Jessica Anderson - Team Leader
TERMS OF REFERENCE	5.2

1. PURPOSE OF REPORT

- 1.1 To ensure that Elected Members review the Council's use of covert surveillance on a quarterly basis in order to provide assurance that it is used consistently in accordance with the Corporate Protocol and Procedure on Covert Surveillance.

2. RECOMMENDATION(S)

That the Committee:-

- 2.1 Notes the update within the report in respect of the Council's covert surveillance activity during Quarter 1 of the current year.

3. BACKGROUND

- 3.1 There are a range of situations in which Council's employees, in the course of their duties, require to carry out investigations and activities which by their very nature are covert, i.e. they are concealed, secret or clandestine. In accordance with the Human Rights Act 1998, it is essential that covert investigations are compatible with Article 8 of the European Convention on Human Rights (ECHR) which states that: "Everyone has the right to respect for his private and private life, his home and his correspondence".

- 3.2 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), provides a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities. RIPSA sets out a process for the authorisation of covert surveillance by designated officers, for the duration of that authorisation and for the review, renewal or termination of authorisations. It gives the Council powers to conduct two types of covert surveillance:

1. Directed Surveillance (is covert surveillance in places other than residential premises or private vehicles); and
2. the use of a Covert Human Intelligence Source (the use of an undercover officer).

- 3.3 The Council has a Corporate Protocol and Procedure in place which governs the use and management of covert surveillance. Further, all members of staff wishing to use RIPSAs, are required to undertake training prior to being able to make an application to undertake covert surveillance.

QUARTER 1- 2021

- 3.4 In the period from 1 January until 31 March 2021, there was one authorisation for Directed Surveillance.
- 3.5 The application during Quarter 1 was from the Trading Standards team and related to the alleged selling of counterfeit goods offences under section 92 of the Trade Marks Act 1994.
- 3.6 Authorisations are executed in accordance with the Council's policy and procedure on Covert Surveillance and are thereafter audited by Legal Services – Regulatory and Compliance Team as is normal practice. The Regulatory and Compliance Team raise any matters of good practice, policy or procedure with the Authorising Officer and the Applicant after every audit. Officers within Legal services do not interfere with the Authorisation process as that responsibility lies with the Authorising Officer. This approach has been agreed and is supported by the Investigatory Powers Commissioner.
- 3.7 Although authorised, the surveillance did not go ahead for operational reasons and the application was then cancelled by the Authorising Officer.
- 3.8 There have been no further applications for covert surveillance made or approved within this quarter.
- 3.9 There have been no changes to the Protocol and it still remains fit for purpose.

TRAINING

- 3.10 As noted on 24 February 2021, the aim is to deliver full training during Q2. Refresher training will be completed by the end of Q3.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report.

5. LEGAL IMPLICATIONS

- 5.1 The Scottish Government Code of Practice on Covert Surveillance sets an expectation that elected members review and monitor the use of RIPSAs on a quarterly basis. This is also a matter which is taken into account by the Investigatory Powers Commissioner when they carry out their inspections.
- 5.2 A review of the Council's RIPSAs activity by elected members provides assurance that the Council's use of RIPSAs is being used consistently and that

the standards set by its policy remain fit for purpose.

- 5.3 The management, knowledge and awareness of those involved with RIPSA activity was something which was commended by the Commissioner in his inspection in 2020. The reporting of RIPSA activity to Committee provides another level of scrutiny and assurance on the use of RIPSA.

6. MANAGEMENT OF RISK

Category	Risk	Low (L) Medium (M) High (H)	Mitigation
Strategic Risk	There are no strategic risks arising from this report.	N/A	
Compliance	That the Council's use of RIPSA is not legally compliant.	L	This Committee receives quarterly and annual reports on RIPSA activity and related policy mitigates this risk highlighted in this section.
Operational	Employees are not suitably trained for RIPSA work Failure to report to and update Committee on RIPSA activity means that it would undermine public confidence in the Council and how it operates.	L	Appropriate and mandatory training arms staff with the correct skills to carry out surveillance and thus, there is little to no risk to staff. All requests for training are met. Reporting to Committee occurs quarterly on RIPSA activity.
Financial	There are no financial risks arising from this report.	N/A	
Reputational	Failure to update Committee on RIPSA activity would mean that the Council would be at risk of reputational damage when this is raised by the IPCO in their inspection.	L	External inspections on RIPSA activity operate every 3-4 years. This provides external assurance to the Committee of the Council's compliance with RIPSA. The Inspection Report is shared with Committee and an Action Plan created (where necessary) and is endorsed and approved by Committee.
Environment / Climate	There are no environmental/	N/A	

	climate risks arising from this report.		
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7. OUTCOMES

<u>COUNCIL DELIVERY PLAN</u>	
Impact of Report	
Aberdeen City Council Policy Statement	The report does not have an impact on the Policy Statement.
Aberdeen City Local Outcome Improvement Plan	
Prosperous Economy Stretch Outcomes	The use of RIPSAs by the Council as an investigatory tool may have an impact on the economy as a result of enforcement action taken by services such as Trading Standard, e.g. such as in enforcing the law around counterfeit goods.
Prosperous Place Stretch Outcomes	Enforcement activity undertaken by the Council by using, where appropriate, its powers under RIPSAs, may have an impact on this theme by tackling the selling of counterfeit goods.
Regional and City Strategies	
	This report does not have an impact on the Regional and City Strategies.
UK and Scottish Legislative and Policy Programmes	
	This report does not have an impact on the UK and Scottish Legislative and Policy Programmes.

8. IMPACT ASSESSMENTS

Assessment	Outcome
Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSAs. Further, there is no requirement to consider the Fairer Scotland Duty as this report does not seek approval for any Strategic decisions and is merely providing Committee with an update RIPSAs activity.
Data Protection Impact Assessment	The purpose of this report is to update Committee on the Council's use of RIPSAs. As such, a Data Protection Impact Assessment is not required.

9. BACKGROUND PAPERS

None.

10. APPENDICES

None.

11. REPORT AUTHOR CONTACT DETAILS

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